

1 Jeffery Harris
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3 Bisbee, AZ 85603
4 (520) 432-2757

5 *Petitioner-Plaintiff in Pro Per*

6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
7 **IN AND FOR THE COUNTY OF COCHISE**

8 **JEFFERY HARRIS,**) Case No.: CV 2019 00052
9 Petitioner-Plaintiff,)
10 vs.)
11 **THE CITY OF BISBEE, ARIZONA;**) **REPLY IN SUPPORT OF RULE 60(a)**
12 **MAYOR, DAVID M. SMITH; and**) **MOTION FOR RELIEF FROM**
13 **MEMBERS OF COUNCIL, ANNA**) **JUDGMENT and RULE 60(b) MOTION**
14 **CLINE, JONI GIACOMINO, JOAN**) **FOR RELIEF FROM JUDGMENT**
15 **HANSEN, BILL HIGGINS, LESLIE**) (No Oral Hearing Requested¹)
16 **JOHNS, and GABE LINDSTROM;**)
17 Respondents-Defendants.) Assigned to: the Hon. Laura Cardinal

18 The above-named Respondents, through Counsel, have responded frivolously to
19 Petitioner Harris' Rule 60(a) and Rule 60(b) Motions for Relief from Judgment in that they have
20 failed to meet the key issue presented by Harris in his quest for relief under Rule 60(b) of Rules
21 of Civil Procedure for Superior Courts. Instead—in the absence of a *relevant* citation to authority
22 that might somehow support its bald assertion(s)—Respondents first slyly contended both that
23 Harris' Rule 60 Motions for Relief from Judgment are allegedly premature and then attacked
24 straw men after misrepresenting the arguments actually presented by Harris in his Rule 60
25 Motions for Relief. These disingenuous arguments in opposition fail, and Harris' Rule 60(b)

1 In that Harris is currently experiencing medical issues that would make it unlikely that he would be able to participate meaningfully at an oral hearing, no oral hearing is requested. Details of Harris' current medical issues or his permanent disability will be made available upon request.

1 Motion for Relief from Judgment should be granted. In the alternative, Harris' Rule 60(a)
2 Motion for Relief from Judgment should be granted.

3 **I. FOR PURPOSES OF RULE 60, BOTH OF HARRIS' MOTIONS FOR RELIEF
4 WERE TIMELY AND PROPER**

5 For purposes of Rule 60 of the Rules of Civil Procedure for Superior Courts, both of
6 Harris' Rule 60 Motions for Relief from Judgment are timely and proper. Entirely consistent
7 with the provisions of Rule 60(a), in the first of his two Motions for Relief, Harris seeks to have
8 the Court correct a clerical mistake or a mistake arising from oversight or omission that was
9 found. As can be seen in the plain language of Rule 60(a) that follows, Harris is entitled to the
10 correction of mistake of the sort described in this Rule *regardless* of whether the mistake
11 occurred in a judgment, an order, or other part of the record:

13 (a) Corrections Based on Clerical Mistakes; Oversights and Omissions. A court
14 must correct a clerical mistake or a mistake arising from oversight or omission if
one is found in a judgment, order, or other part of the record.

15 Moreover, Harris' second Motion for Relief (in which he seeks to be relieved from this Court's
16 Minute Entry Order, dated May 9, 2019, on the basis material misrepresentation of an opposing
17 party) is entirely consistent with the provisions of Rule 60(b)(3). As can be seen in the plain
18 language of Rule 60(b) that follows, in the face of material misrepresentation by an opposing
19 party, it was both timely and proper for Harris to seek relief from the Court's Minute Entry
20 Order, granting the Motion to Dismiss, regardless of whether it is a final judgment, an order, or a
21 proceeding:

23 (b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion
24 and just terms, the court may relieve a party or its legal representative from a final
judgment, order, or proceeding for the following reasons:

25 (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or
other misconduct of an opposing party

1 Despite Respondents' baseless assertion to the contrary, both of Harris' Rule 60 Motions for
2 Relief from Judgment are timely, proper, and entirely consistent with the provisions of Rule 60
3 of the Rules of Civil Procedure for Superior Courts, and should therefore be considered on their
4 merits.

5 **II. RESPONDENTS FAILED TO MEET THE KEY ISSUE RAISED BY HARRIS IN**
6 **HIS QUEST FOR RELIEF UNDER RULE 60(b)**

7 Respondents failed to meet the key issue raised by Harris in his quest for relief under
8 Rule 60(b)(3) of the Rules of Civil Procedure. Harris gave as a reason for granting his quest that
9 Respondents *materially misrepresented* their wholesale failure to provide Harris with an
10 opportunity to exhaust his administrative remedies. Rather than respond in a forthright manner to
11 Harris' contention that such misrepresentation was fraudulently used to defeat Harris' key
12 argument based on the ripeness doctrine, Respondents instead attacked straw men. Respondents
13 began their straw-man attack by misrepresenting two plainly distinct Motions to Strike—joined
14 in the title by the conjunctive ‘and’—as “a single motion” in a single brief. Respondents then
15 evasively misconstrued Harris’ contention that *material misrepresentation* was used to
16 fraudulently defeat his key argument based on the ripeness doctrine as “nothing more than a
17 reassertion of the claim that [Harris] was not allowed to exhaust his administrative remedies
18 pursuant to Bisbee City Code.” At no time did Respondents address Harris’ contention that
19 Respondents supported their Motion to Dismiss with material misrepresentation; instead, they
20 glossed over this matter entirely. Especially in light Respondents’ wholesale failure to meet the
21 key issue raised by Harris in his quest for relief under Rule 60(b)(3), Harris’ Rule 60(b) Motion
22 for Relief from Judgment should be granted.

23
24 DATED this 8th day of June, 2019.

/s/ Jeffery Harris

25 Jeffery Harris

1 Original of the foregoing transmitted electronically on this
2 8th day of June, 2019 to:

3 Clerk of the Court
4 Cochise County Superior Court
5 100 Quality Hill
6 Bisbee, Arizona 85603

7 By mutual agreement, copy of the foregoing was
8 electronically transmitted on this same day to:

9
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